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No. 80-2209

In the Supreme Court of the United States

OCTOBER TERM, 1980

UNITED STATES OF AMERICA, PETITIONER

v.

ALBERT ROSS, JR.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

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SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

This supplemental memorandum, filed pursuant to Rule 22.6 of the Rules of this Court, is submitted to direct the Court's attention to the recent decision of the United States Court of Appeals for the Eighth Circuit in *United States* v. *Mefford*, No. 81-1104 (Sept. 8, 1981). Like *Government of the Virgin Islands* v. *Rasool*, No. 81-1267 (3d Cir. Aug. 19, 1981), noted in our reply memorandum (at 5 note 3), *Mefford* upholds the warrantless search of an unsealed paper bag, distinguishing *Robbins* v. *California*, No. 80-148 (July 1, 1981). The analysis and result in *Mefford*, like the Third Circuit's in *Rasool*, conflict with the court of appeals'

decision in the instant case.[1] The recent decision by the Eighth Circuit underscores the absence of definitive guidance for resolution of the question presented in our petition and accordingly demonstrates the need for consideration of that question by this Court.[2]

For the foregoing reasons and the reasons stated in the petition and our reply memorandum, the petition for a writ of certiorari should be granted.

REX E. LEE
Solicitor General

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[1]As in the Third Circuit case, the Eighth Circuit relied in part (slip op. 7-11) on *New York* v. *Belton*, No. 80-328 (July 1, 1981), but stated in addition that the defendant, Mefford, "did not have a sufficient expectation of privacy to invoke [*United States* v.] *Chadwick* [, 433 U.S. 1 (1977)] protection" for the contents of his unsealed paper bag (*United States* v. *Mefford*, *supra*, slip op. 9).

[2]We also call the Court's attention to *Sharpe* v. *United States*, Nos. 79-5314 & 79-5315 (4th Cir. Sept. 4, 1981), in which a divided panel held that a warrant was required to search burlap bags believed to contain marijuana. The conflicting opinions of the majority and the dissent in that case further illustrate the uncertainty that the issue presented in our petition in the instant case continues to generate in the lower courts.

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